

Majority Report

1.1 The Legal and Constitutional Affairs References Committee (the committee) held one single-day hearing for its inquiry into work undertaken by the Australian Federal Police (AFP) Oil for Food Taskforce in accord with its terms of reference which were to report on:

- the work undertaken by the AFP Oil for Food Taskforce (OFFTF);
- the level of resourcing that was provided and used by the Taskforce; and,
- any other related matter.

Terms of Reference of the OFFTF

1.2 The former Attorney-General, the Hon Philip Ruddock MP, announced the establishment of the Oil for Food Taskforce (OFFTF) on 20 December 2006. The terms of reference for the OFFTF were:

- consider the Commissioner's findings in relation to possible breaches of the law in the context of the report and information obtained by the Cole Inquiry;
- co-ordinate consultation between agencies and authorities with an interest in the finding;
- undertake investigations into possible offences and other breaches of the law that are referred to in the findings of the Cole Inquiry report;
- consult with prosecuting and other relevant authorities on the question of whether prosecutions, or other legal proceedings, should be instituted against any person in connection with the Commissioner's findings;
- refer briefs of evidence and other relevant material to prosecuting or other authorities to enable the appropriate authority to consider whether prosecutions or other proceedings should be commenced for breach of a law; and
- investigate, or refer to appropriate authorities, matters relating to possible breaches of the law not referred to in Commissioner Cole's findings that are discovered during the Task Force's investigations.

Background

1.3 The OFFTF commenced work on 22 January 2007.

1.4 The OFFTF was comprised of officers from the Australian Federal Police (AFP), Victoria Police (to advise on potential offences under the *Crime Act 1958* (Vic)) and the Australian Securities and Investments Commission (ASIC), with administrative and legal support comprising of the Commonwealth Director of Public Prosecutions (CDPP), the Attorney-General's Department (AGD) and the Department of Prime Minister and Cabinet (DPM&C).

1.5 In 2006 the government allocated \$20.3 million to the OFFTF for the three years to 2008/09. This quantum of funding covered the anticipated expenditure for the AFP, ASIC, CDPP, AGD and DPM&C for the duration of the OFFTF.

1.6 An additional \$3.1 million was committed in the 2009/10 Budget to continue the OFFTF for a further 12 months to June 2010.

1.7 The AFP gave evidence that it considered that the level of resourcing made available to it through the provision of funding specifically for the OFFTF was sufficient to implement the terms of reference. Although resources fluctuated across the life of the OFFTF, at the height of the investigation, there were 28 people allocated to the OFFTF.

Work of the OFFTF

1.8 The scope of the OFFTF was to investigate all allegations of criminality raised by the Cole Inquiry. The OFFTF conducted wide ranging inquiries including interviewing a large number of witnesses and examining approximately 900,000 pages of documents submitted to the Cole Inquiry together with documents obtained from the United Nations (UN), shipping records, and banking records.

1.9 The OFFTF identified numerous present or former Australia Wheat Board (AWB) employees who may have held information relevant to the investigation. The OFFTF formally corresponded with the individuals identified by Commissioner Cole QC as possibly having committing criminal offences, however all declined to participate in formal records of interview. The OFFTF also interviewed a number of former and current Department of Foreign Affairs and Trade (DFAT) and AUSAID employees.

1.10 The OFFTF directed significant resources towards a financial analysis of all relevant transactions, and in support of this sought evidence from seven foreign jurisdictions via mutual assistance requests through the AGD.

1.11 In July 2007, ASIC determined it would pursue a separate investigation into whether offences had been committed contrary to the Corporations Act 2001 and, in August 2007, withdrew its members from the OFFTF.

1.12 ASIC subsequently charged several people and civil convictions have been recorded in two cases and others are still in progress.

Legal and Constitutional Affairs References Committee Inquiry

1.13 The Senate committee inquiry public hearing was attended by only three committee members for the duration, and by a fourth who was frequently absent.

1.14 It would seem that the Senate inquiry was generated by 'new evidence' in a court document tabled in the Federal Court on the 10th of August 2010 in which the

AWB is alleged to have admitted that it made payment, contrary to evidence it had previously given.

1.15 Whilst a great deal of reliance was placed on that so called admission, not as much attention was drawn to the balance of that paragraph where the AWB denied that any such payments were illegal, or done without the knowledge of either the UN or DFAT.

1.16 Evidence provided to the committee *in camera* raised a number of 'new' allegations which were also the subject of questioning during the inquiry.

1.17 During the public hearing credible evidence indicated that, in view of senior experienced investigators and of an independent QC, Mr Hastings (who was retained to advise on the likely outcome of any criminal proceedings versus the cost and the possibility of any convictions), the task force should be disbanded and the inquiry stopped. A committee member sought at the public hearing access to a report to this effect by Mr Hastings QC. The advice from Mr Hastings QC was also subsequently sought in writing by the committee.

1.18 The AFP noted that the OFFTF was previously discussed in the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (ACLEI) in August 2012, where a copy of the legal advice provided by Mr Hastings QC was requested.

1.19 The AFP took this request on notice as a potential claim for Public Interest Immunity (PII). The ACLEI Committee was subsequently advised in writing in September 2012 by the then Minister for Home Affairs and Justice that the AFP would claim PII over the legal advice provided by Mr Hastings QC, but also offered a private briefing to the committee on the decision to discontinue the investigation. This detailed private briefing was subsequently conducted on 20 September 2012.

1.20 Experienced investigators advised the committee that there was a significant difference between evidence which was given to the Cole Inquiry, and evidence which they could use to support prosecutions. It was pointed out to the committee that evidence given to the royal commission was obtained by coercion and was not available for use in criminal prosecutions.

1.21 In July 2009, the then AFP Commissioner Mick Keelty engaged Peter Hastings QC to 'undertake a review of the material gathered to date and to consider the likelihood, or otherwise, of a successful conclusion to the matter, including future avenues of enquiry and further evidence to be gathered'.

1.22 Mr Hastings QC advised that the resources required to mount a prosecution would be disproportionate to the prospects of the criminal prosecution succeeding.

1.23 Those committee members who attended the hearing were able to form views on the demeanour of the witnesses before the committee. Most of the committee's

evidence was taken *in camera* to protect the innocent and to guard against unfounded and unsupported allegations being made public.

1.24 Whilst the committee appreciates the commitment and sincerity of the witnesses who expressed some concern at the course of the investigation, the committee was not persuaded that there was any evidence which would support further inquiries into the investigation and the termination of the task force. Often the full facts are not within the knowledge of less senior officers.

1.25 Some of the specific evidence of a witness, as to a certain course of events and actions involving other people, was directly rejected by those involved and it would seem that time and the passage of events may have made recollection of events uncertain.

1.26 The committee notes that already the Food-for-Oil issue has been subjected to:

- The Cole Royal Commission;
- One other parliamentary inquiry which reported in June 2013 and made no recommendations about the work of the OFFTF;
- Substantial investigation with a budget of \$26 million by the AFP and ASIC; and,
- An independent investigation by ASIC which has resulted in civil convictions and the imposition of substantial penalties.

1.27 Throughout the investigation the OFFTF exhaustively canvassed and assessed readily-available evidence, however, the OFFTF faced a number of key challenges in the course of the investigation including:

- Evidence obtained from Cole inquiry witnesses was not in an admissible form for use in criminal proceedings and had to be re-collected in an admissible form using *Crimes Act 1914* (Cth) powers and in accordance with the requirements of the *Evidence Act 1995* (Cth). In addition, the AFP could not force witnesses to provide statements in relation to the matter;
- Much of the material relevant to the investigation was held by international entities, which required time-consuming legal processes and the cooperation of overseas agencies. In particular there were significant delays in obtaining information in an admissible form through MAR's from other jurisdictions, as is the case in many complex fraud offences involving other jurisdictions; and
- When the AFP sought relevant material from ASIC, under section 127 of the *Australian Securities and Investment Commission Act 2001* (Cth), the dissemination of this material was challenged through court action by AWB.

1.28 In tendering this majority report, the majority of the committee congratulate all officers of the AFP and ASIC who have worked diligently and honestly in the

investigation of this matter. The majority of the committee supports the conclusions of senior investigators in this matter.

Recommendation 1

1.29 Having heard the evidence and read the submissions, the majority of the committee is persuaded that this matter should not further exercise the resources of the Federal Parliament.

**Senator the Hon Ian Macdonald
Deputy Chair**

**Senator the Hon Joe Ludwig
Labor Senator for Queensland**

